

**5145.303 Providing material.**

(S-90) Existing Government material on hand or being used prior to conversion to contractor performance of commercial activities may be offered to contractors if it is determined to be in the best interest of the Government per FAR 45.303-1. If the material is to be provided without replacement by the Government, the solicitation must state that it will not be replaced. If it is determined that the Government will be responsible for replacement of any of the material, those items must be listed on a separate Technical Exhibit and the solicitation state that replacement will be by the Government. These items will be governed by the appropriate Government Property clause in the contract in accordance with FAR 52.245-2 for fixed-price and FAR 52.245-5 for cost-reimbursement type contracts.

**PART 5152—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES**

5152.208-9001 Industrial preparedness planning.

5152.245-9000 Government property for installation support services (fixed-price contracts).

5152.245-9001 Government property for installation support services (cost-reimbursement contracts).

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

**5152.208-9001 Industrial preparedness planning.**

As prescribed at 5108-070(g)(4) insert the following clause in full text in contracts where the contractor is designated a Limited Fee Planned Producer.

**INDUSTRIAL PREPAREDNESS PLANNING (XXX 1989) (DEV)**

(a) The Government designates the contractor a Limited Fee Planned Producer (LFPP) for the item(s) listed in paragraph (e) of this clause. As an LFPP for the listed items, the contractor will be solicited for all acquisitions over \$25,000 which are for the item(s), excluding those for which competition is restricted to the Restricted Specified Base pursuant to an approved Justification and Approval. The Government reserves the right to obtain the item(s) listed from sources other than the commercial market-

place, i.e. by assigning workload to a government-owned facility.

(b) The Contractor agrees to:

(i) Update the Production Capacity Survey DD Form 1519 TEST for each item biennially;

(ii) Accomplish subcontractor planning as required in paragraph (f) of this clause;

(iii) Permit Government personnel access to records, manufacturing process data, plants and facilities in order to verify data on the Production Capacity Survey DD Form 1519 TEST.

(iv) Maintain the surge/mobilization capacity set forth in the Production Planning Schedules during active production of the item and for a period of (negotiated number) years after physical completion of this production contract.

(c) The Contractor is aware of the Government's dependence upon the Production Planning Schedules as a basis to take appropriate measures to ensure the adequacy of the United States Industrial Base. The Contractor also recognizes the Government's intention to convert Production Planning Schedule to contracts on a selective basis, as may be required to minimize materiel shortages during mobilization or to meet contingencies short of a declared national emergency. The Contractor agrees to accept contracts for the item(s) in accordance with the Production Planning Schedules. In the event mobilization or contingencies short of a declared national emergency occur after active production has ceased, and the allocated capacity is in use for the production of other item(s), the Contractor agrees to immediately discontinue production of such other item(s) if necessary to meet production schedules for the planned item(s). The Contractor further recognizes that it is the Government's intention to require that planned subcontractor support will be similarly converted to production subcontracts. Production delivery obligations under this clause are governed by Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*) (Defense Production Act) and as applicable are within the purview of the Defense Priorities and Allocation System.

(d) For the listed item(s), the Contractor certifies by signing this contract that the plant capacity required to support the mobilization quantity listed on the Production Capacity Survey DD Form 1519 TEST will be dedicated exclusively for the production of that item at mobilization. Furthermore, the Contractor certifies that this capacity is not shared by any other mobilization production requirements.

(e) This clause covers the item(s) listed below:

## Department of the Army

Item schedule No.	Item nomenclature (sample)
M11111 .....	Fuze, Rocket MK987.
M22222 .....	Machine Gun, MK35.

(f) Subcontractors, suppliers and vendors provide many of the components of military end items. The lack of critical components could be one of the major limitations of the United States' ability to support its Armed Forces warfighting capabilities. Therefore, the Government designated critical components and/or subassemblies in Block #27 of the attached Production Capacity Survey (DD Form 1519 TEST) are those for which the Contractor will conduct vertical planning if not produced in-house. Additional critical components and/or subassemblies may be identified by the Contractor in block #21 of the attached Production Capacity Survey (DD Form 1519 TEST). Foreign producers (other than Canada) will not be considered as a source of supply for critical components. Mandatory vertical (subcontractor) planning will be accomplished by the ASPPO and the Contractor for all critical components identified on the Production Capacity Survey, (DD Form 1519 TEST), by using a sub-tier Production Capacity Survey (DD Form 1519 TEST). The Contractor agrees to coordinate completion of the DD Form 1519 TEST and finalize prime and subcontractor planning with the Armed Services Production Planning Officer (ASPPO) having cognizance over the prime contractor's facility.

(g) After completion of active production of the item(s), the Government will annually, or as changes occur but not more than annually, furnish the Contractor updated technical data for the item. The Contractor agrees to review the technical data and to report to the Government within 60 days of receipt of the data, the impact of technical changes, if any, to the current Production Planning Schedules at no additional cost to the Government.

(h) Retention by the Contractor of the surge/mobilization capacity set forth in the Production Planning Schedules after completion of active production of the planned item(s) will not necessarily require that the Contractor maintain such capacity in idle status. Contractor utilization of capacity allocated for planned production for production of other non-planned items is consistent with the intent of any postproduction provisions of this contract, provided no degradation of surge/mobility capacity occurs as a result, and provided that the approval of the Contracting Officer with property cognizance is obtained for the use of any Government-owned property.

[54 FR 38683, Sept. 20, 1989]

## 5152.245-9001

### **5152.245-9000 Government property for installation support services (fixed-price contracts).**

As prescribed in 5145.302-3(91), insert the following:

GOVERNMENT PROPERTY FOR INSTALLATION SUPPORT SERVICES (FIXED-PRICE CONTRACTS) (OCT 1989) (DEV)

The Government property listed at Technical Exhibit \_\_\_\_ is provided "as is" to the contractor for use in the performance of this contract. This property may be used by the Contractor until the Contractor no longer desires to use it for contract performance or the Contracting Officer withdraws it from use under this contract in accordance with FAR 52.245-2(b). The Contractor will comply with instructions from the Contracting Officer relative to disposition of the property. No equitable adjustment or other claim will be payable to the Contractor based upon the condition or availability of the property, except as provided in FAR 52.245-19. The Contractor remains responsible for performance of the required services under this contract regardless of the length of time which the property provided hereunder remains operational. Property provided by or obtained by the Contractor under this contract remains Contractor property. Except as provided herein, the property listed at Technical Exhibit \_\_\_\_ will be governed by FAR 52.245-2, Government Property (Fixed-Price Contracts), and FAR 52.245-19, Government Property Furnished "as is".

(End of clause)

[54 FR 39539, Sept. 27, 1989]

### **5152.245-9001 Government property for installation support services (cost-reimbursement contracts).**

As prescribed in 5145.302-3(S-91), insert the following clause:

GOVERNMENT PROPERTY FOR INSTALLATION SUPPORT SERVICES (COST-REIMBURSEMENT CONTRACTS) (OCT 1989) (DEV)

(a) *Government-furnished property.* The Government property listed at Technical Exhibit \_\_\_\_ is provided to the contractor for use in the performance of this contract for installation support services. This property will be used, maintained and administered by the Contractor until it is no longer required by the Contractor. Cessation of such use of the property, and subsequent turn-in, must be approved by the Contracting Officer. The

Contracting Officer will provide the Contractor with appropriate disposition instructions. The Contractor will continue to perform following such disposition with Contractor-owned property. No equitable adjustment or claim will be payable resulting from turn-in or unsuitability for intended use of this property. No change to this contract is indicated by approval of turn-in of the property. No delay claim or performance delay will be allowed based on unsuitability of property or turn-in. The Contractor's proposal includes an estimate of the costs for providing its own property for the period following turn-in of Government property.

(b) *Changes in Government-furnished property.* The Contracting Officer may, by written notice, decrease the Government-furnished property or substitute other property for the property being used by the contractor. In the case of this withdrawal of property by the Contracting Officer, an equitable adjustment may be appropriate. Nevertheless, even in the case of such withdrawal, the Contractor is obligated to continue performance under this contract.

(c) *Title in Government Property.* (1) Title to the Property shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations under paragraph (g) of this clause shall pass to and vest in the Government upon completion of their installation in the property.

(2) Title to the property shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the property become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the property free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of any of the property.

(3) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government furnished premises, readily removable machinery, equipment and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(4) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations as used herein, means any alteration or improvement in the nature

of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Location of the property.* The Contractor may use the property only at the installation location(s) specified in the schedule. Written approval of the Contracting Officer is required prior to moving the property to any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the property involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(e) *Notice of use of the property.* The Contractor shall notify the Contracting Officer in writing whenever any item of the property is no longer needed or usable for performing under this contract. The contracting officer will then make a decision as to disposition if agreement is reached with the Contractor that the property is no longer usable or suitable for its intended use.

(f) *Property Control.* The Contractor shall maintain property control procedures and records, and a system of identification of the property, in accordance with the provisions of FAR subpart 45.5 in effect on the date of this contract.

(g) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall protect, preserve, maintain (including normal parts replacement), and repair the property in accordance with sound industrial practice.

(2) No later than 45 days after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show the adequacy of the proposed program. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under paragraphs (g) (1) and (5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under paragraphs (g)(1) through (g)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires

maintenance in excess of the normal maintenance program. The Contracting Officer shall then make a determination whether to repair the facilities or whether the Contractor should provide contractor property while continuing to perform.

(5) The Contractor shall keep records of all work done on the property and shall give the Government reasonable opportunity to inspect such records. When property is disposed of under this contract, the Contractor shall deliver the related records to the Government, or, if directed by the Contracting Officer, to third persons.

(6) The Contractor's obligation under this clause for each item of property shall continue until the item is removed, abandoned, or disposed of in accordance with Contracting Officer's instructions.

(h) *Access.* The Government and any persons designated by it shall, at all reasonable times have access to the premises where any of the property is located.

(i) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the property under this contract. Nevertheless, this provision applies only to injury arising out of use of property provided under this clause.

(j) *Representation and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any property. To the extent practical, the Contractor shall be allowed to inspect all the property to be furnished by the Government.

(2) If, however, the Contractor receives property in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer, and at Government expense, either return such item or otherwise dispose of it or effect repairs or modifications. If the determination is made by the Contracting Officer to require turn-in rather than repair of the property, then the Contractor will continue to perform the contract by using its own property, for which reimbursement will be made in accordance with applicable cost principles.

(k) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in paragraphs (k) (2) and (3) of this clause.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (f) of this clause.

(3)(i) If the Contractor fails to act as provided by paragraph (k)(2)(v) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or non-acceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (k)(6). However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (k) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government

property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(1) *Disposition of the facilities.* (1) The provisions of this paragraph shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor because the property is no longer suitable for intended use, no longer desired, or is withdrawn from use by the Government.

(2) The Contractor shall dispose of the property provided hereunder in accordance with guidance provided by the Contracting Officer.

(3) The Contracting Officer shall give disposition instructions within 60 days of agreement that the property should be returned to the Government.

(4) The Government may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated.

(5) When Government property is returned to the Government, upon termination of the contract relationship between Government and Contractor or when Government furnished property is replaced by Contractor property, the Contracting Officer may direct repair of Government property necessitated by the change from Government to Contractor property such as removal of fixtures. When Contractor property is removed from Government property at the end of contract performance, the Government property will be restored to its condition prior to installation of Contractor property in accordance with Contracting officer direction.

(End of clause)

[54 FR 39539, Sept. 27, 1989]